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No. 43

In the Supreme Court of the United States

OCTOBER TERM, 1952

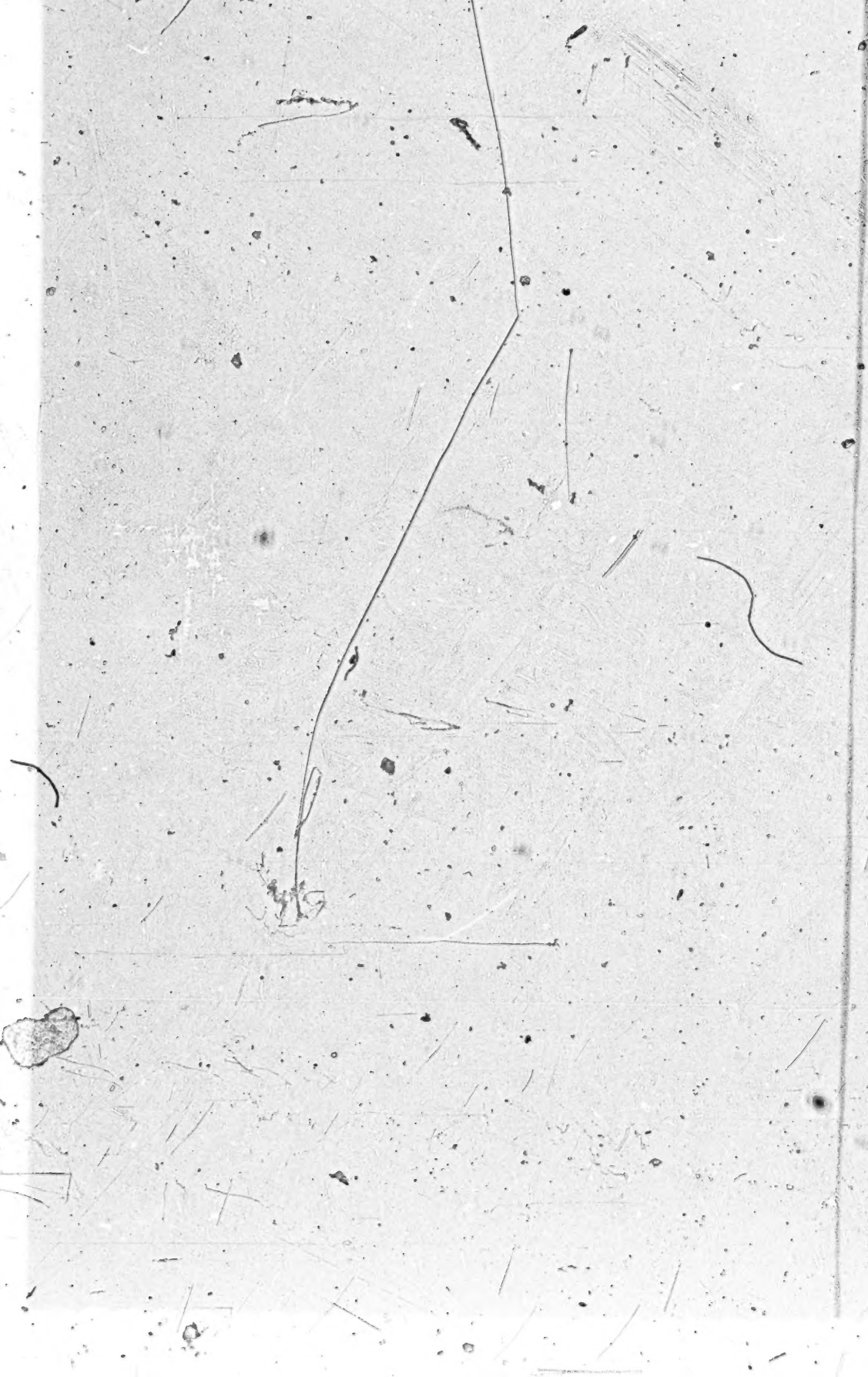
MONTGOMERY BUILDING AND CONSTRUCTION TRADES COUNCIL, ET AL., PETITIONERS

v.

LEDBETTER ELECTION COMPANY, INC.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALABAMA

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD AS AMICUS CURIAE



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OPINIONS BELOW

The initial opinion of the Supreme Court of Alabama (R. 38-54) is reported at 57 So. 2d 112, and its supplemental opinion on rehearing (R. 54-56) is reported at 57 So. 2d 121. The decisions of the Circuit Court for Montgomery County, Alabama, granting an injunction (R. 9) and refusing to dissolve it (R. 33) are unreported.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. 1257. The petition for a writ of certiorari was granted on June 2, 1952, 343 U.S. 962.[1]

QUESTION PRESENTED

Whether, at the suit of an employer, a state court may issue a temporary injunction against violations of Section 8(b)(4)(A) and (B) of the National Labor Relations Act.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, before amendment (49 Stat. 449, 29 U.S.C. 151, *et seq.*), and after amendment (61 Stat. 136, 29 U.S.C. Supp. V, 141, *et seq.*), are set forth in the Appendix, *infra*, pp. 46-64.

STATEMENT

On October 20, 1950, Ledbetter Erection Company filed a complaint in an Alabama Circuit Court requesting an injunction against the Montgomery Building & Construction Trades Council and others, petitioners herein, for conduct alleged to violate Section 8(b)(4) of the National Labor Relations Act (R. 2-9). The allegations of the complaint may be summarized as follows:

Bear Brothers, a general contractor, entered into an agreement for the construction of a multi-story,

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[1] Our memorandum supporting the petition for certiorari discussed, at pp. 19-21, the reasons favoring the view that the judgment of the court below is final within the meaning of 28 U. S. C. 1257, and this discussion is not repeated here.

124 rental unit apartment house in Montgomery, Alabama (R. 3, 6). Bear Brothers subcontracted to Ledbetter the job of erecting and riveting the structural steel used in the construction of the apartment house (R. 3). Bear Brothers' employees were unorganized; Ledbetter's employees operated under a union-shop contract (R. 3, 4). The Trades Council placed a picket line around the construction project, which, the complaint alleged, induced Ledbetter's employees "to engage in a concerted refusal to perform services for the object of forcing or requiring another employer [Bear Brothers] to recognize or bargain with the labor organization" which had not been certified by the National Labor Relations Board, "and to force or to require complainant Ledbetter Erection Company, Inc., to cease doing business with Bear Brothers, Inc." (R. 5). This conduct, it was alleged, is "a violation of Section 8(b)(4) of the National Labor Relations Act as amended and amounts to secondary picketing as therein defined and prohibited" (R. 5).[2]

The complaint prayed for a temporary injunction, to be made permanent on final hearing, restraining the Trades Council from (1) picketing the construction job, (2) engaging in any unfair labor practice as defined by the Labor Management Relations Act, (3) inducing the employees of Led-

[2] While the picket line was alleged simply to violate Section 8 (b) (4) of the Act, it is apparent that the wording of the complaint further limits the allegations to 8 (b) (4) (A) and (B). No charge alleging that this conduct constituted an unfair labor practice was ever filed with the National Labor Relations Board.

better to engage in a concerted refusal to perform services for the purpose of forcing Bear Brothers to recognize an uncertified union as representative, (4) inducing the employees of Ledbetter to engage in a concerted refusal to perform any services in order to force Ledbetter to cease doing business with Bear Brothers, and (5) for other relief (R. 8-9). The complaint also requested that on final hearing a judgment for damages be rendered "by reason of such unlawful picketing in violation of Section 303 of the Labor Management Relations Act" (R. 9).

On consideration of the complaint, a temporary injunction was granted in the identical terms requested (R. 9-11). The Trades Council moved to dissolve the injunction because the relief requested was within the exclusive authority of the National Labor Relations Board to grant and the State court was therefore without jurisdiction (R. 19-21). Thereafter, in support of the complaint, an affidavit was filed by the vice president of Bear Brothers attesting (R. 22):[3]

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[3] In addition to its motion to dissolve the injunction, the Trades Council had filed an answer to the complaint (R. 14-18), in which it alleged that "the erection of the building is entirely an intrastate job and the National Labor Relations Board would have no jurisdiction over the operation of said job" (R. 17). The quoted part of the affidavit filed by the vice president of Bear Brothers, as well as the quoted part of the affidavit filed by the vice president of Ledbetter (*infra*, p. 5), is evidently in response to this allegation and is designed to show the interstate ramifications of the construction project. At the hearing on its motion to dissolve the injunction, the Trades Council withdrew its answer and relied entirely on its challenge to the jurisdiction of the State court (R. 33, 41).

that a labor dispute or stoppage of work on said project would materially obstruct or interfere with the free flow of goods in interstate commerce; that a large portion of the materials used in the construction of said job are shipped in interstate commerce and if such job were stopped by union activities, the flow of such goods in commerce would cease; for example, all of the exterior covering of said apartment house is brick, which will be shipped from Texas; the glazed tile from Pennsylvania; the steel sash from Detroit, Michigan; door frames from New York; metal lath from Ohio, plaster from Georgia, Virginia, and Texas; cement from various sources, including places outside of the State of Alabama; the structural steel was rolled at a rolling mill outside of the State of Alabama; paint and acoustical tile are not manufactured in the State of Alabama and are necessarily brought in from outside the State; electrical wiring and fixtures likewise, and in fact a great majority of the materials used on such job will necessarily move in interstate commerce.

Another affidavit, filed by the vice president of Ledbetter in support of the complaint, alleged that heavy equipment, valued at $25,000, which was being used on the project "has been scheduled for work on other jobs * * * out of the State of Alabama, which jobs are now being delayed because of the delay of work in Montgomery, caused by the picket line" (R. 30).

The motion to dissolve the injunction was denied

by the Alabama Circuit Court (R. 33), and, on appeal to the Alabama Supreme Court from the denial of the motion, the judgment of the lower court was affirmed (R. 56-58). The Alabama Supreme Court sustained the continuance of the injunction on the ground that, as alleged in the complaint (*supra*, pp. 2-3), the Trades Council's conduct was in violation of Section 8(b)(4)(A) and (B) of the National Labor Relations Act.[4] Distinguishing *Amalgamated Association* v. *Wisconsin Employment Relations Board*, 340 U. S. 383, and *Automobile Workers* v. *O'Brien*, 339 U. S. 454, because those cases pertained to enforcement of state legislation inconsistent with the National Act (R. 50-51, 52-53), the court held that this case is different because the claim here asserted by the employer rests on "a right which the Labor Management Act has conferred upon him" (R. 51). Since the right it adjudicated in this case flows from the National Act, and not from State law, the court below stated that the only issue is "whether or not the Labor

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[4] The complaint also invoked Sections 54 and 57, Title 14, Code of Alabama (1940) (R. 7). These provisions, which are not relied upon, or even mentioned, by the court below, declare, respectively, that:

"Two or more persons who, without a just cause or legal excuse for so doing, enter into any combination, conspiracy, agreement, arrangement, or understanding for the purpose of hindering, delaying, or preventing any other persons, firms, corporation, or association of persons from carrying on any lawful business, shall be guilty of a misdemeanor."

"Any person, firm, corporation, or association of persons who uses force, threats, intimidation, or other unlawful means to prevent any other person, firm, corporation, or association of persons from engaging in any lawful occupation or business shall be guilty of a misdemeanor."

Management Act furnishes the exclusive remedy for its enforcement" (R. 51). The court concluded that "it was not the intention of Congress to make the administrative remedy exclusive in respect to all unfair practices affecting commerce" (R. 48), but that State courts have jurisdiction to vindicate, through the injunctive process at the suit of private parties, rights conferred by the National Act where irreparable injury is shown and the administrative remedy is inadequate.

The court below reasoned that "when the National Congress within its constitutional power passes an act conferring a right and providing a remedy, such remedy so provided is not ordinarily exclusive, thereby preventing such other remedies as may be available to obtain its benefits under state law then existing" (R. 44-45). Accordingly, "when commerce is affected, under the terms of the Labor Relations Act as amended, injunctive relief in the State court would not be set aside on account of such Act of Congress, unless it clearly excluded the jurisdiction of the State court in that respect" (R. 45). Such clear exclusion, the court below continued, was evinced by the Act before its amendment, for in empowering the Board to redress unfair labor practices, Section 10 (a) of the National Act then read that this "power shall be exclusive"; but the word "exclusive" was deleted by the amendment to the Act, and this deletion "serves to eliminate that feature of the original act which excluded all courts from exercising in-

junctive jurisdiction and limited all jurisdiction to the Board exclusively" (R. 49, 45-49).

For the present the court below apparently limited its holding to permitting "a state court to enjoin an unfair labor practice by a labor organization under Section 8 (b) (4) and Section 303, * * * which does not impede the flow of commerce, but which incidentally affects commerce" (R. 43, 48, 50, 51, 53). In addition, in confining its decision to the situation where the remedy before the Board is inadequate, the court held the remedy before the Board to be inadequate in the "special circumstances" of an uncontroverted allegation of irreparable injury, "augmented by the necessary time of the Board in making the preliminary investigation, and subject to a possibility that the Board will not take jurisdiction on account of the small amount of influence the transaction has on the flow of interstate commerce" (R. 55).

SUMMARY OF ARGUMENT

As before its amendment, so now, the procedure set forth in the National Labor Relations Act for enforcing the public rights it confers is exclusive. This is the conclusion of the courts of last resort of California, Connecticut, Minnesota, and New York, and of lower courts in other States. It is similarly the conclusion of the United States Courts of Appeals for the Fourth, Eighth, and Ninth Circuits, and of numerous federal district courts.

Before amendment of the National Labor Rela-

tions Act, it was settled that the statutory procedure was exclusive. The same essential scheme for unitary enforcement through the Board was retained in the amended Act. In supplementing the remedies available under the original Act, Congress did not open the door to extra-statutory remedies. Because of recognition that "appeal must be made * * * to the National Labor Relations Board" and that obtaining relief "depends upon the decision of the National Labor Relations Board as to whether any action shall be taken, and the conduct of the proceedings will be entirely in the hands of the NLRB attorneys instead of attorneys of the injured party," a minority of the Senate Labor Committee proposed that, with respect to 8 (b) (4) violations only, private parties be allowed direct recourse to federal district courts for injunctions under a procedure substantially freed from the restrictions of the Norris-LaGuardia Act. S. Rep. No. 105, 80th Cong., 1st Sess., 54-56. After much discussion, this proposal was voted down, 93 Cong. Rec. 4847. It was rejected because enforcement was deemed more suitably entrusted to administrative processes exclusively controlled by a specialized agency in which precipitate action would be guarded against by preliminary investigation; it was also feared that private recourse to injunctive relief uncontrolled by the safeguards of the Norris-LaGuardia Act would reintroduce familiar abuses. 93 Cong. Rec. 4834-4847, 4864, 4868, 6446, 4132-4133, S. Rep. No. 105, 80th Cong., 1st Sess., 56.

Congress therefore retained the "administrative law approach" and rejected the "so-called court approach." 93 Cong. Rec. 4132.

The elimination of the word "exclusive" by the amendment to Section 10 (a) of the National Act, in defining the power of the Board, does not, as the court below believes, have the purpose of permitting recourse to extra-statutory procedures. First, as the House Conferees explained, because of the amendment's new "provisions authorizing temporary injunctions enjoining alleged unfair labor practices" at the suit of the Board in a federal district court pending proceedings before the Board, and because of "provisions making unions suable" for money damages for conduct condemned by Section 8 (b) (4) as unfair labor practices, it was thought no longer appropriate to describe the Board's power as wholly exclusive. H. Conf. Rep. No. 510, 80th Cong., 1st Sess., 52. It was for this reason alone that the word "exclusive" was deleted. Second, while deleting the word "exclusive," Congress also added a proviso to Section 10 (a) of the Act authorizing the Board to "cede" jurisdiction to a state agency which, among other requirements, has a statute paralleling the National Act in terms and interpretation. The placement of the proviso as an addendum to the power of the Board signifies that, except for the proviso and in conformity with it, no other tribunal may operate in the field occupied by the Board.

The attempt of the court below to limit its holding to permitting a state court to act where the unfair labor practice affects commerce but does

not impede its flow is unpersuasive. "Congress drew no such distinction but, instead, saw fit to regulate labor relations to the full extent of its constitutional power under the Commerce Clause." *Amalgamated Association* v. *Wisconsin Employment Relations Board*, 340 U. S. 383, 391.

The court below further limits its holding to situations where the remedy before the Board is inadequate. This limitation is also unpersuasive. The grounds of inadequacy stated by the Court are (1) the time consumed in the Board's preliminary investigation before it will seek a temporary injunction, during which irreparable injury may occur, and (2) the possibility that the Board may choose not to take jurisdiction, for administrative reasons of budget and staff availability, where the impact on commerce, though enough for the Board to exercise jurisdiction, may not be sufficiently substantial to warrant its exertion. A preliminary investigation is conducted in every case so that the remedy before the Board would in the view of the court below virtually never be adequate, for the irreparable injury envisioned by the court is the sort of injury which is likely to ensue as the result of any secondary boycott. Furthermore, it was precisely because the Board does conduct a preliminary investigation to screen out unmeritorious cases that enforcement of Section 8 (b) (4) was entrusted to it rather than to private initiative. Finally, that the Board may not entertain an unfair labor practice charge, because of its insubstantial impact on commerce measured by the Board's administrative standards, does not change the right

conferred, or the method of its enforcement, from a public to a private one.

ARGUMENT

The court below has held that state courts have power to enjoin activities denounced as unfair labor practices by the National Labor Relations Act. Justifying this conclusion, the court explicitly recognized that it was enforcing "rights" created by the National Act, but held that the statutory method for enforcing these rights through the National Labor Relations Board is not exclusive (R. 43, 44-45, 48, 53, 54-55).[5] The particular un-

[5] As we have mentioned (note 4, p. 6, *supra*), respondent, in addition to the National Labor Relations Act, invoked in its complaint seeking an injunction two Alabama statutes providing criminal sanctions against specified forms of interference with the conduct of a lawful business. These criminal statutes are not even mentioned, however, in the opinion below, which expressly and repeatedly makes clear that the sole basis on which the injunction was affirmed was the alleged violation of Section 8(b)(4)(A) and (B) of the National Act.

In its brief opposing certiorari (p. 8), respondent invokes for the first time Section 383, Title 26, Code of Alabama (1951 Cum. Supp.), which provides that: "Every person shall be free to join or to refrain from joining any labor organization * * *, and in the exercise of such freedom shall be free from interference by force, coercion or intimidation, or by threats of force or coercion, or by intimidation of or injury to his family." Respondent argues that, by analogy to *Building Service Employees* v. *Gazzam*, 339 U.S. 532, the decision below can be sustained as an expression of the public policy of Alabama to safeguard employees from coerced membership in a union. Neither alleged in the complaint nor considered by the court below, this newly improvised contention is in no sense a basis for the decision below. Indeed, the complaint cannot even be read to suggest this issue, for it alleges only that the ultimate object of the Trades Council and its allied unions was to have Bear Brothers recognize a labor organization as the representative of its employees (R. 4-5). Recognition of a union does not at all imply compulsory membership in it. In any event, as construed by the Alabama Supreme Court, Section 383, Title 26, of its Code does not prohibit a contractual requirement for union member-

fair labor practices which led to the injunction in this case are those defined by Section 8(b)(4)(A) and (B) of the Act (Appendix, *infra*, pp. 53-54), but it is clear that the court's ruling would apply equally to any other unfair labor practices. Eliminating any possible doubt on this score, the injunction sustained by the court below forbids, not only the specific conduct of which respondent complained, but "any unfair labor practices as defined by the Labor Management Relations Act" (R. 10).

The procedure thus approved for securing temporary injunctive relief against alleged unfair labor practices differs in two critical respects from the procedure for remedying unfair labor practices which is provided by the National Act. First, respondent, a private party, applied directly to the court for the temporary injunctive relief it has been granted. Under the terms of the Act, a private party desiring relief against an unfair labor practice must file a charge with the Board, and only the Board's General Counsel, acting upon such a charge, is authorized to seek temporary injunctive relief. Second, respondent's application for injunctive relief was made to a state court. Under the terms of the National Act, temporary injunc-

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ship as a condition of employment, and seems to permit a strike and picketing to obtain such an agreement. *Hotel and Restaurant Employees* v. *Greenwood*, 249 Ala. 265, 30 So. 2d 696. So it remains clear on any view that the issue squarely posed by the express ruling of the court below cannot be evaded; and that issue, several times reiterated in the court's opinion, is "whether or not the [National Labor Relations] Act furnishes the exclusive remedy for its enforcement" (R. 51).

tive relief in cases of this character may be awarded, at the suit of the General Counsel, only by the federal courts.

These vital differences make it clear that if Congress intended the administrative scheme it provided for prevention and correction of unfair labor practices to be exclusive, the granting of injunctive relief by the state court on respondent's application conflicts with paramount law. We shall show that such a conflict exists—that in the amended Act, as in the original Act, Congress intended that the wrongs it denounced as unfair labor practices should be remedied only by the procedures the Act prescribes, and that these procedures may not be circumvented and displaced by private suits for injunctive relief.

THE PROCEDURE ESTABLISHED IN THE NATIONAL LABOR RELATIONS ACT FOR VINDICATING THE PUBLIC RIGHTS IT CREATES IS EXCLUSIVE AND PRECLUDES INJUNCTIVE RELIEF AGAINST UNFAIR LABOR PRACTICES IN SUITS BY PRIVATE PARTIES.

Before the amendment of the National Labor Relations Act in 1947, it was settled that vindication of the rights it conferred was "confided by the Act, by reason of the recognized public interest, to the public agency the Act creates." *Amalgamated Utility Workers* v. *Consolidated Edison Co.*, 309 U.S. 261, 266.[6] "The Board as a public agency acting in the public interest, not any pri-

[6] Accord: *U. E. R. & M. W.* v. *I. B. E. W.*, 115 F. 2d 488 (C.A. 2); *Fur Workers Union, Local No. 72* v. *Fur Workers Union, Local No. 21238*, 105 F. 2d 1, 8-17 (C.A. D.C.), affirmed, 308 U.S. 522; *Int'l Brotherhood* v. *Int'l Union*, 106 F. 2d 871 (C. A. 9); *Blankenship* v. *Kurfman*, 96 F. 2d 450, 453-454 (C. A. 7).

vate person or group, not any employee or group of employees, is chosen as the instrument to assure protection from the described unfair conduct in order to remove obstructions to interstate commerce." *Id.* at 265.[7] By centralizing control in the Board, Congress fulfilled its object "to dispel the confusion resulting from dispersion of authority and to establish a single paramount administrative or quasi-judicial authority in connection with the development of the Federal American law regarding collective bargaining." S. Rep. No. 573, 74th Cong., 1st Sess., 15; see also H. Rep. No. 1147, 74th Cong., 1st Sess., 23.

The amendments to the Act made no change in this basic design. Except for the decision below,[8] the uniform prevailing view is that the public rights created by the Act remain enforceable exclusively through the administrative scheme the Act provides. This is the conclusion of the courts of last resort of California,[9] Connecticut,[10] Minnesota,[11] and New York,[12] and of lower courts in

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[7] See also, *National Licorice Co.* v. *National Labor Relations Board*, 309 U.S. 350, 362-363; *Phelps Dodge Corp.* v. *National Labor Relations Board*, 313 U.S. 177, 193.

[8] But see also *Oregon ex rel. Tidewater-Shaver Barge Lines* v *Dobson*, 30 LRRM 2345 (Oregon Sup. Ct., June 4, 1952).

[9] *Gerry* v. *Superior Court*, 32 Cal. 2d 119, 194 P. 2d 689; *In re De Silva*, 33 Cal. 2d 76, 199 P. 2d 6.

[10] *McNish* v. *American Brass Co.*, 30 LRRM 2254 (Conn. Sup. Ct. of Errors, June 2, 1952); compare *U. E.* v. *Lawlor*, 15 Conn. Sup. 326, 22 LRRM 2407, 2410-11 (Superior Ct., Conn., April 9, 1948).

[11] *Norris Grain Co.* v. *Nordaas*, 232 Minn. 91, 46 N. W. 2d 94.

[12] *Costaro* v. *Simons*, 302 N. Y. 318, 98 N.E. 2d 454; see also, *Ryan* v. *Simons*, 277 App. Div. 1000, 100 N.Y. Supp. 2d

other states.[13] It is similarly the conclusion of the United States Courts of Appeals for the Fourth,[14] Eighth,[15] and Ninth[16] Circuits, and of numerous federal district courts.[17] It is a conclusion which is clearly compelled by the terms, structure, purpose, and history of the Act.[18]

18, affirmed, 302 N.Y. 742, 98 N.E. 2d 707, certiorari denied, 342 U.S. 897; *Alonzo* v. *Industrial Container Corp.*, 193 Misc. 1008, 85 N. Y. Supp. 2d 835; compare, *Levinsohn* v. *Joint Board*, 299 N.Y. 454, 87 N.E. 2d 510.

[13] *Robinson Freight Lines* v. *Teamsters Union*, 28 LRRM 2453 (Court of Appeals, Tenn., July 18, 1951); *Reed Construction Co.* v. *Building Council*, 27 LRRM 2161 (Chan. Ct. Miss., February 22, 1950); *Wilkes Sportswear* v. *Garment Workers*, 29 LRRM 2300 (Common Pleas, Pa., December 26, 1951); *General Electric Co.* v. *U. A. W.*, 30 LRRM 2607, 2612-13 (Ohio Ct. of Ap., September 8, 1952).

[14] *Amazon Cotton Mill Co.* v. *Textile Workers Union*, 167 F. 2d 183 (C.A. 4); see also, *Textile Workers Union* v. *Arista Mills Co.*, 193 F. 2d 529, 533 (C.A. 4).

[15] *Amalgamated Association* v. *Dixie Motor Coach Corp.*, 170 F. 2d 902 (C.A. 8).

[16] *Schatte* v. *Theatrical Stage Employees*, 182 F. 2d 158, 165-166 (C.A. 9), certiorari denied, 340 U.S. 827; *California Association* v. *Building Trades Council*, 178 F. 2d 175 (C.A. 9).

[17] *I. L. U.* v. *Sunset Line & Twine Co.*, 77 F. Supp. 119 (N.D. Cal.); *United Packing House Workers* v. *Wilson & Co.*, 80 F. Supp. 563 (N.D. Ill.); *Textile Workers Union* v. *Berryton Mills*, 28 LRRM 2540 (N.D. Ga., July 23, 1951); *Born* v. *Cease*, 101 F. Supp. 473 (D. Alaska); *Nash Kelvinator Corp.* v. *Grand Rapids Building Trades Council*, 30 LRRM 2466 (W.D. Mich., July 2, 1952); compare *Reavis* v. *I. B. E. W.*, 101 F. Supp. 542 (N.D. Tex.).

[18] The court below undertakes (R. 46-49) to distinguish such cases as *Amazon Cotton Mill Co.* v. *Textile Workers Union*, 167 F. 2d 183 (C. A. 4) holding that the federal courts are without authority to grant relief against unfair labor practices at the suit of private parties. These holdings, the court declares, are explained by the restrictions in the Norris-La Guardia Act (47 Stat. 70, 29 U. S. C. 101 *et seq.*) on the jurisdiction of federal district courts to act in labor disputes, a factor irrelevant to the exercise of general equity power by

A. *As in the original Act, the scheme of the amended Act, designed to achieve uniform and specialized administration, precludes concurrent or substituted enforcement by state courts*

To the extent that they bear on the problem presented here, the basic provisions of the National Labor Relations Act creating unfair labor practices and providing means for their correction were carried forward unchanged by the amendments of 1947. As it did originally, the Act sets out to minimize obstructions to commerce (Section 1) by defining certain labor practices as unfair (Section 8(a) and (b)) and empowering the Board "to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce"

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a state court. But a reading of the opinions in question makes clear that, while some of them are alternatively grounded on the applicability of the Norris-La Guardia Act, all of them are independently based on the view that the Act's procedure for remedying unfair labor practices is exclusive and that application by private parties to the courts is, therefore, foreclosed. Furthermore, were it true that the National Labor Relations Act entitled private parties to seek judicial as well as administrative relief at their option, the earlier, general provisions of the Norris-La Guardia Act would not bar recourse to the federal courts. *Virginian Ry. Co.* v. *System Federation*, 300 U. S. 515, 563; *Graham* v. *Brotherhood of Locomotive Firemen & Enginemen*, 338 U. S. 232, 237-240; *Brotherhood of Railroad Trainmen* v. *Howard*, 343 U. S. 768, 774.

In short, the conflict of decisions to which we refer can neither be minimized nor explained away; the numerous decisions we have cited stand squarely against the decision below. What is important here, of course, is that the court below has erred and that, as we seek to demonstrate in the discussion following, the many contrary authorities we have cited are clearly correct in their construction of the Act.

(Section 10(a)). To carry out this function, as well as others,[19] Congress created the Board as an agency of the United States (Section 3 (a)). The method provided for enabling a private party to obtain redress against unfair labor practices is still the filing with the Board of a charge, which "sets in motion the machinery of an inquiry." *National Labor Relations Board* v. *Indiana & Michigan Electric Co.*, 318 U. S. 9, 18.

Unlike the original Act, the amended Act provides for a General Counsel of the Board who is vested with final authority, on behalf of the Board, to investigate unfair labor practice charges, to issue complaints pertaining to them, and to prosecute such complaints before the Board (Section 3(d)). But this provision for dividing responsibility between the Board and its General Counsel, which has as its "well-understood purpose * * * to effect a separation of the prosecuting and adjudicating functions within the Board" (*Haleston Drug Stores* v. *National Labor Relations Board*, 187 F.

[19] The Board is also empowered (1) to administer the representation machinery for ascertaining whether a majority of employees in an appropriate unit desire to be represented in collective bargaining by a labor organization (Section 9 (b) and (c)); (2) to conduct a union shop poll to ascertain whether employees desire to rescind the authority of their representative to negotiate a union security agreement (Section 9 (e)); (3) to conduct a poll to ascertain whether employees desire to accept their employer's last offer of settlement as a preliminary step to the dissolution of a national emergency injunction (Section 209 (b), Title II, Labor Management Relations Act, 1947); and (4) to enforce or protect the rights, privileges, and immunities granted or guaranteed the employees of any consolidated or merged carrier under Section 222 (f) of the Communications Act of 1934, as amended (57 Stat. 5, 47 U. S. C. 222 (f)).

2d 418, 421 (C. A. 9), certiorari denied, 342 U. S. 815), neither has been nor could be claimed to suggest any intention to depart from the established rule that the administrative remedy affords the sole means of correcting unfair labor practices. If anything, this effort to improve the Board's procedures reflects Congress' recognition that the rule was being retained. See pp. 20-21, 22, *infra*.

Upon the filing of a charge, the Board, by its General Counsel, is empowered to issue a complaint against the alleged offender, together with a notice of hearing (Sections 10 (b) and 3 (d)). Should a complaint issue, the offender is entitled to answer, and at the ensuing hearing, customarily presided over by a trial examiner of the Board, evidence is adduced relevant to the issues joined by the complaint and answer (Section 10 (b)). Upon the record so made, "reduced to writing and filed with the Board," the Board states its "findings of fact," and issues an order, either dismissing the complaint or granting relief, whichever in its judgment is appropriate to the disposition of the cause in the light of the policies the Act is designed to effectuate (Section 10 (c)). Thereafter, the Board may seek enforcement of its order, or any "person aggrieved by a final order of the Board granting or denying" relief may seek its review, in an appropriate Court of Appeals which has, upon certification to it of the transcript of the record before the Board, "exclusive" jurisdiction to decide the controversy within the scope of permissible review (Section 10 (e) and (f)). These steps, from complaint

through court review and enforcement, like the initiating charge, are identical in every presently material respect in both the original and amended Act.

In a second change, the amended Act enables the Board to obtain interlocutory relief against the commission of unfair labor practices (*National Labor Relations Board* v. *Denver Building and Construction Trades Council*, 341 U. S. 675, 681-683) by applying to an appropriate federal district court, during the pendency of proceedings before the Board, for a temporary injunction (Section 10(j) and (l)). With respect to the unfair labor practices defined by Section 8(b)(4)(A), (B), and (C),[20] should the "officer or regional attorney" investigating the charge have "reasonable cause to believe such charge is true and that a complaint should issue," it is mandatory for him to petition a federal district court "for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter" (Section 10(l)). The same procedure is applicable to unfair labor practices charged under Section 8(b)(4)(D) except that application for temporary injunctive relief is not mandatory (Section 10(l)). With respect to all other unfair labor practices, after the issuance of a complaint, the Board may in its discretion seek interlocutory relief (Section 10(j)).

Like the new division of authority between Board and General Counsel, the provision for interlocu-

[20] The first two of these subsections, (A) and (B), are involved in this case.

tory injunctions to be sought *by the Board* affords no basis for the granting of such relief by any court, state or federal, at the suit of a private party. Precluding any doubt of this, the Senate Committee reporting the provision explained it as follows (S. Rep. No. 105, 80th Cong., 1st sess., 8):

> Time is usually of the essence in these matters, and consequently the relatively slow procedure of Board hearing and order, followed many months later by an enforcing decree of the circuit court of appeals, falls short of achieving the desired objectives—the prompt elimination of the obstructions to the free flow of commerce and encouragement of the practice and procedure of free and private collective bargaining. Hence we have provided that *the Board, acting in the public interest and not in vindication of purely private rights,* may seek injunctive relief in the case of all types of unfair labor practices and that it shall also seek such relief in the case of strikes and boycotts defined as unfair labor practices. [Emphasis added.]

In addition to the Board's newly created authority to seek injunctive relief pending its administrative proceedings, the amended Act carries forward from the original Act provisions giving to the court of appeals, during the pendency of review or enforcement proceedings, "exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper" (Section 10(e) and (f)). Whenever the Board seeks temporary injunctive relief, either from a federal

district court pending proceedings before the Board or from a court of appeals pending review or enforcement proceedings, the restrictions of the Norris-La Guardia Act are declared inapplicable (Section 10(h)). But these restrictions are lifted "only where an injunction is sought by the National Labor Relations Board, not where proceedings are instituted by a private party." *Bakery Drivers Union* v. *Wagshal*, 333 U. S. 437, 442.

The foregoing summary makes it clear, we think, that the National Labor Relations Act, unaltered in this respect by the amendments of 1947, still prescribes "a particular method by which [unfair labor] practices should be ascertained and prevented," still "sets forth a definite and restricted course of procedure," and still designates the "Board as a public agency acting in the public interest, not any private person or group, * * * as the instrument to assure protection from the described unfair conduct in order to remove obstructions to interstate commerce." *Amalgamated Utility Workers* v. *Consolidated Edison Co.*, 309 U. S. 261, 264, 265. The two changes we have noted—the assignment of independent responsibilities to the General Counsel and the provision for temporary injunctive relief pending Board proceedings—merely strengthen this conclusion. Both changes were designed to improve the effectiveness of the prescribed statutory scheme. Congress chose to strengthen its existing exclusive machinery, not to supplement or displace it by permitting recourse to other means of enforcement by private persons.

It is evident, in short, that in the amended Act, as in the original, "Congress has worked out elaborate administrative machinery for dealing with the whole field of labor relationships, a matter requiring specialized skill and experience, and has provided for the handling of unfair labor practices by an administrative agency equipped for the task." *Amazon Cotton Mill Co.* v. *Textile Workers Union*, 167 F. 2d 183, 187 (C. A. 4). To permit any court of general jurisdiction to redress the unfair labor practices denounced by the Act on application of a private person would destroy this integrated administration of the Act through centralized control in the Board. There would be an end to the "uniformity of administrative policy and disposition, expertness of judgment, and finality in determination" (*Aircraft Corp* v. *Hirsch*, 331 U. S. 752, 767-768) which Congress clearly sought to achieve.[21] As the Court of Appeals for the Fourth Circuit pointed out, rejecting the argument that private parties could obtain injunctive relief against un-

[21] It is true that some diffusion may arise with respect to 8(b)(4) unfair labor practices as a result of providing an administrative remedy before the Board and a suit for money damages for parallel conduct before a court of competent jurisdiction. Title III, Sec. 303, Labor Management Relations Act, 1947, 61 Stat. 158, 29 U. S. C., Supp. V, 187. For suggested means of overcoming or minimizing this consequence by permitting the administrative judgment to prevail, see Comment, 61 Yale L. J. 745 (1952). But whatever inconsistencies may develop in this respect (compare *United Brick & Clay Workers* v. *Deena Artware, Inc.*, 30 LRRM 2485 (C. A. 6, July 30, 1952)) with *National Labor Relations Board* v. *Deena Artware, Inc.*, 30 LRRM 2479, 2484-2485 (C. A. 6, July 30, 1952), it is clear that Congress refused to depart further from administrative handling of unfair labor practices. See pp. 25-30, *infra*. The court below overstepped the plain line that Congress drew.

fair labor practices in the federal district courts (*Amazon Cotton Mill Co.* v. *Textile Workers Union*, *supra*, at 190):

> More than two hundred local tribunals of general jurisdiction would be clothed with the special jurisdiction now vested in a unified agency with nationwide jurisdiction over labor controversies; and it is not difficult to forsee the confusion that would necessarily result. Certainly the statute should not be given an interpretation which would lead to such consequences.

When the interpretation thus rejected is adopted and extended, as it is in the decision below, to the multitude of state courts exercising general jurisdiction, the mischief is infinitely multiplied. Beginning with its pioneer and classic expression in *Texas and Pacific Railway Co.* v. *Abilene Cotton Oil Co.*, 204 U.S. 426, through its recent reaffirmation in *Far East Conference* v. *United States*, 342 U. S. 570, a settled course of interpretation safeguards the administrative process against such disruption.

As the court below appears to acknowledge (R. 50, 51, 52-53), were Alabama to duplicate the unfair labor practices defined by the National Act and apply its prohibitions to operations affecting commerce, it is clear that the state would have effected a forbidden intrusion into a field which Congress has preempted. *Plankinton Packing Co.* v. *Wisconsin Employment Relations Board*, 338 U.S. 953; *Amalgamated Association* v. *Wisconsin Em-*

ployment Relations Board, 340 U.S. 383, 390, n. 12. Alabama cannot achieve the same result, and the same mischief in administration, by enforcing the National Act rather than its own law.

B. *The legislative history of the 1947 amendments confirms the conclusion that the statutory procedures are exclusive*

If the statutory text left any doubt that in retaining the detailed provisions for enforcement through the Board Congress meant to retain as well the exclusive character of these provisions, the doubt would be erased by the legislative history of the amendments. Congress was fully aware that the new unfair labor practices defined by the amended Act, including those in Section 8(b)(4), would, like the old, be enforceable only through the Board. Recognizing this, a minority of the Senate Labor Committee, composed of Senators Taft, Ball, Donnell, and Jenner, proposed that, with respect to 8(b)(4) violations only, private persons be allowed direct recourse to federal district courts for injunctions under a procedure substantially freed from the restrictions of the Norris-La Guardia Act. S. Rep. No. 105, 80th Cong., 1st sess., 54-56. They explained in support of this proposal that (*id.* at 54):

> The committee bill admits that such boycotts and strikes are improper, but it only proposes to make them unfair labor practices. *This means that appeal must be made * * * to the National Labor Relations Board.* The

bill does provide that, on petition of the NLRB regional attorney, the Board may obtain a temporary injunction from a court while it is conducting a hearing on the question whether the strike is an unfair labor practice or not. If it finds that it is, it then may issue a cease and desist order against such a strike and later ask to have this enforced by the court. In our opinion this is a weak and uncertain remedy for those injured by clearly illegal strikes. *It depends upon the decision of the National Labor Relations Board as to whether any action shall be taken, and the conduct of the proceedings will be entirely in the hands of the NLRB attorneys instead of attorneys of the injured party.* The facts in such cases are easily ascertainable by any court and do not require the expertness supposed to be one of the virtues of the administrative law procedure. In addition to that, the best estimate of the time lag between the filing of charges with the NLRB and its obtaining of a temporary injunction is not less than 2 weeks to a month. [Emphasis added.]

Senator Ball thereafter introduced and strongly supported the proposal espoused by the minority of the Senate Labor Committee. 93 Cong. Rec. 4834-4838. After much discussion, it was voted down. 93 Cong. Rec. 4847. It was rejected because enforcement was deemed more suitably entrusted to administrative processes exclusively controlled by a specialized agency in which precipi-

tate action would be guarded against by preliminary investigation.[22] It was also feared that private recourse to injunctive relief uncontrolled by the safeguards of the Norris-LaGuardia Act would reintroduce familiar abuses. 93 Cong. Rec. 4834-4847, 4864, 4868, 6446, 4132-4133, S. Rep. No. 105, 80th Cong., 1st sess., 56.

Illustrative of the sentiment which prevailed are the statements of Senators Ives, Morse, and Smith. Senator Ives stated that (93 Cong. Rec. 4839):

> * * * [the] proposal revives the injunction upon the request of an employer. * * * I deplore a condition which in any way, shape, or manner will revive the flagrant abuses which brought about the enactment of the Norris-LaGuardia Act. I think the pending amendment opens the door; it is the entering wedge.

Senator Morse declared (93 Cong. Rec. 4841):

> It has been my consistent endeavor while this legislation has been under discussion to wrest determination of labor problems so far as it is humanly possible to do so in a single organization that is expert in labor problems. I assume that if the debates on this bill have served no other purpose they have demonstrated to all Members of the Senate the com-

[22] Thus, Congress rejected Senator Ball's argument that it was unnecessary that the "National Labor Relations Board shall first screen the charges, before the courts are permitted to pass on them." 93 Cong. Rec. 4836.

plexity and difficulty of this field. Labor problems are complex; as complex, indeed, as our entire social structure, since the great mass of our people are workers. It is a field which has been growing even more complex as our society has come to depend more and more upon the output of large industrial enterprises. Nor will these problems be simplified if the legislation which we have here proposed becomes law. Close day-to-day contact with these problems is necessary if able persons are to keep themselves even reasonably informed.

I am confident, despite the high regard in which I hold the district judges of the United States, that they have neither the background, the desire, or the time, to become experts in these matters. It is one thing to grant to the district courts, upon application of the Board, an interim power to maintain the status quo pending resolution of the problem by the body which we have selected as the expert body to handle such problems. It is quite a different thing to do what this bill proposes, namely, to throw these matters for final decision into the laps of the approximately 250 district judges of the United States, some of whom may have some knowledge of the field, but all of whom can certainly not pretend to be experts. * * *

* * * I cannot be convinced that it is sound legislation to disperse the authority over these problems, to draw into the orbit of their handling, a host of district attorneys and Federal judges without competence in the field or, by splitting up authority among all

> the district attorneys and district judges of the land, to make impossible the development of a uniform body of precedent and decisions, harmoniously integrated with each other over the entire economy.

Senator Smith said (93 Cong. Rec. 4843):

> We decided, after debating the question, that instead of opening these cases to direct attack by employers aggrieved, it was wiser to consider them as unfair labor practices, and put them under the National Labor Relations Board. . . . I feel that as we have broadened the scope of the National Labor Relations Board and the scope of the Wagner Act to include unfair labor practices by labor organizations as well as by employers, our logical procedure in dealing with these questions is through the Board, placing the responsibility on the Board to deal with such cases, whether on the one side or the other.

Congress specifically and deliberately chose, in short, to retain the "administrative law approach," and rejected the "so-called court approach." 93 Cong. Rec. 4132. It did so in order to insure the "disinterested, public interest standards and expertness of a governmental agency which has the initiative control of retributory measures." *Bruce's Juices, Inc.* v. *American Can Co.*, 330 U.S. 743, 751.

Impressed "that opposition to restoring the injunctive process even in cases of secondary boycotts and jurisdictional strikes seems to be so

strong," Senator Taft offered as a compromise alternative the creation of a cause of action *for money damages only* for the conduct proscribed by Section 8(b)(4) as unfair labor practices. 93 Cong. Rec. 4843-4844. Section 303 of Title III, Labor Management Relations Act, embodying this compromise, was thereafter introduced and enacted. 93 Cong. Rec. 4858-4860, 4874; see also *I. L. W. U. v. Juneau Spruce Corp.*, 342 U. S. 237, 243-245. It permits suit for money damages, to compensate for injury from conduct identical to that prohibited by Section 8(b)(4), to be brought "in any district court of the United States * * *, or in any other court having jurisdiction of the parties * * *." Thus, the sole judicial action which Congress authorized private parties to initiate in either the state or the federal courts was a suit for damages. This limited grant of specific authority confirms what the other provisions of the Act and the legislative history amply demonstrate—that injunctive relief against such unfair labor practices cannot be obtained by private parties or granted by a state court, but can be sought only by the Board and awarded only by the federal courts.

C. *The deletion of the word "exclusive" from Section 10(a) of the Act, which empowers the Board to prevent unfair labor practices, was not designed to confer concurrent jurisdiction on state courts*

Section 10(a) of the Act in its original form provided:

> The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power [shall be exclusive, and] shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, [code,] law, or otherwise.

The amendments of 1947 deleted the words we have bracketed and added the following proviso:

> *Provided,* That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith.

As its sole basis for holding that the amended Act differs from the original Act in permitting state courts to redress unfair labor practices by injunction, the court below relies on the omission of the word "exclusive" from Section 10(a).

In the light of the considerations already advanced, it would seem clear that, by the mere elimination of the word "exclusive" while retaining and strengthening the Act's unified scheme of ad-

ministrative enforcement, Congress did not intend to permit private parties to invoke extra-statutory enforcement procedures. But there are more specific and decisive arguments which show that the court below has misconceived the significance of the deleted word. To begin with, the legislative history reveals that the change was not intended as the court construes it. As the House conferees explained, because of the new "provisions authorizing temporary injunctions enjoining alleged unfair labor practices" at the suit of the Board in a federal district court pending proceedings before the Board and because of "provisions making unions suable" for money damages for conduct constituting unfair labor practices under Section 8(b)(4), it was thought no longer appropriate to describe the Board's power as wholly exclusive. H. Conf. Rep. No. 510, 80th Cong., 1st sess., 52.[23] It was for this reason alone that the word "exclusive" was deleted. The omission of this single word, a slight change fully explained by the legis-

[23] The conferees added that the "conference agreement makes clear that, *when* two remedies exist, one before the Board and one before the courts, the remedy before the Board shall be in addition to, and not in lieu of, other remedies." *Ibid.* (Emphasis added). This "does not mean, of course, that a general remedy in the courts was being given by the act, but merely that an option existed where a remedy in the courts was given by the act, or existed otherwise." *Amazon Cotton Mills Co.* v. *Textile Workers Union*, 167 F. 2d 183, 187 (C. A. 4). Insofar as unfair labor practices are concerned, the reference to "*when* two remedies exist" can relate only to temporary injunctive relief at the instance of the Board and to suit for money damages for conduct proscribed by Section 8 (b) (4). These aside, no other "remedies exist * * * before the courts" for the redress of unfair labor practices.

lative history, was plainly not intended to accomplish the drastic innovation of a wholly new scheme of enforcement. *Amazon Cotton Mill Co.* v. *Textile Workers Union*, 176 F. 2d 183, 187 (C.A. 4), *Gerry* v. *Superior Court*, 32 Cal. 2d 119, 194 P. 2d 689, 694, 695; *McNish* v. *American Brass Co.*, 30 LRRM 2254, 2256 (Conn. Sup. Ct. of Errors, June 2, 1952); *Born* v. *Cease*, 101 F. Supp. 473, 477 (D. Alaska).

Moreover, in ascertaining whether particular enforcement machinery which Congress creates precludes resort to any other, the determination has never turned on whether the statute expressly describes its procedure as "exclusive." Contrary to the assumption of the court below (R. 44-45)—that when Congress "passes an act conferring a right and providing a remedy, such remedy so provided is not ordinarily exclusive"—the rule is that "In such a case the specification of one remedy normally excludes another." *Switchmen's Union* v. *National Mediation Board*, 320 U. S. 297, 301. This is particularly true where the right created is "public" rather than "private," as under the National Labor Relations Act. See pp. 14-15, *supra*. And the applicability of the rule here is clearly demonstrated by decisions under the original Act holding the Board's powers to be exclusive in areas where the Act did not explicitly so describe them.

Thus, although the Act did not literally command such a result, the Board's sole standing to bring contempt proceedings was inferred from

the "aim, character and scope" of the Act in creating a "particular agency" and a "special procedure" to redress unfair labor practices. *Amalgamated Utility Workers* v. *Consolidated Edison Co.*, 309 U. S. 261, 264. Similarly, although "the Act does not in express terms make the certification power of the Board exclusive," this was inferred as "the plain intent of the Act" discernible from the creation of a "new agency with both power and machinery appropriate to the enforcement of the rights recognized and to the prevention of the practices denounced." *Fur Workers Union, Local No. 72* v. *Fur Workers Union, Local No. 21238*, 105 F. 2d 1, 12 (C. A. D. C.), affirmed, 308 U. S. 522; accord, *National Labor Relations Board* v. *Northern Trust Co.*, 148 F. 2d 24, 27 (C. A. 7). In addition, the preclusion of state action was likewise deducible, although not explicitly stated, since "it long has been the rule that exclusion of state action may be implied from the nature of the legislation and the subject although express declaration of such result is wanting." *Bethlehem Steel Co.* v. *New York Labor Board*, 330 U. S. 767, 772.

When the original Act used the word "exclusive" in describing the power of the Board to prevent unfair labor practices, it merely confirmed what the Act as a whole in any event necessarily required. See *Amalgamated Utility Workers* v. *Consolidated Edison Co.*, *supra*, at 266. The deletion of the word "exclusive" did not change the Act as a whole. Congress still sought the benefits of uniformity and specialization. Congress still sought to avoid the confusion of dispersing the adminis-

tration of the Act among state and federal courts in addition to the Board. These considerations control. As in *Texas and Pacific Railway Company* v. *Abilene Cotton Oil Company*, 204 U. S. 426, the structure, subject, history, and purpose of the Act converge to require that the statutory scheme for remedying unfair labor practices be held exclusive. In *Texas and Pacific*, the initial exclusive jurisdiction of the Interstate Commerce Commission was implied, although not in terms prescribed, because of the "indissoluble unity" of the statutory scheme, the need for a "uniform standard," the conferment of "administrative power" upon the Commission, and "because, if the power existed in both courts and the Commission to originally hear complaints * * *, there might be a divergence between the action of the Commission and the decision of a court * * * which would render the enforcement of the act impossible." 204 U. S. at 440-441. Here, as there, "the act cannot be held to destroy itself." *Id.* at 446.

Finally, the view that disruption of the established statutory scheme was intended by omission of the word "exclusive" from Section 10 (a) is refuted by the proviso that Congress, in the same amendment, added to this section, providing for cession of jurisdiction by the Board to state or territorial agencies. *Supra*, p. 31. The location of this proviso as an addendum to the Board's own powers signifies that, except for the proviso and in conformity with it, no other tribunal may operate in the field occupied by the Board. And the terms under which cession may take place em-

phasize the concern of Congress with maintaining uniformity in administration. The Board may not "cede" jurisdiction to a state or territorial agency if "the provision of the State or Territorial statute applicable to the determination of such cases by such agency *is inconsistent* with the corresponding provision of this Act or *has received a construction inconsistent* therewith." (Emphasis added.) Thus, cession to a state agency is conditioned, not only upon substantial identity in the provisions of the parallel statutes, but also upon substantial continuing identity in their interpretation. But if, as in this case, a state court undertakes on its own to redress the unfair labor practices prohibited by the National Act, there can be no assurance that its interpretation and application of the Act will be in accordance with the Board's.[24] See pp. 40-42, *infra*. Expressly legislating against such uncer-

[24] In respondent's brief in opposition to certiorari (pp. 14-15), there is a suggestion that in view of the uncontroverted allegation of a violation of Section 8 (b) (4) (A) and (B) it is unseemly to contest jurisdiction to redress an admitted wrong. But, "The question here is not whether we are dealing with a primary or secondary boycott, but whether our state courts or N.L.R.B. has the power to make such decision." *Norris Grain Co.* v. *Nordaas*, 232 Minn. 91, 108, n. 7, 46 N. W. 2d 94, 104. There is no merit to the suggestion that "because it is clear what the decision of the Board will be * * *, a court has original jurisdiction merely because it may be certain what the Board will hold." *Int'l Brotherhood* v. *Int'l Union*, 106 F. 2d 871, 876 (C. A. 9). The "power to decide a matter can hardly be made dependent on the way it is decided." *Bethlehem Steel Co.* v. *New York Labor Board*, 330 U. S. 767, 775. Thus, respondent's suggestion would lack merit even if it were not true, as it is, that the pleader's conclusion that Section 8(b) (4) (A) and (B) have been violated is open to dispute. See pp. 40-42, *infra*.

tainty in the very section on which the court below relies, Congress could not have meant to recreate it by omission of the word "exclusive."

D. *Because the unfair labor practices alleged were admittedly subject to the National Board's jurisdiction, neither the amount of commerce involved nor the supposed inadequacy of the statutory remedy sustains the state court's assertion of jurisdiction*

It is clear, of course, that on the undisputed facts showing the nature of the business involved in this case (pp. 2-3, 5, 6, *supra*), the alleged unfair labor practices would be subject to the jurisdiction of the National Labor Relations Board.[25] There would otherwise have been no occasion for the court below to consider whether the jurisdiction it was asserting was precluded by the National Act.

Conceding, then, that it was sustaining the power of state courts to remedy by injunction in private suits practices which the Act empowers the Board to prevent, the court below has indicated certain restrictions it would recognize upon this alternative state remedy. First, the court would apparently approve this remedy only where the unfair labor practices, though affecting commerce, do not

[25] Compare the interstate commerce ramifications involved in the construction of the multi-story 124-unit apartment house in this case with those involved in the construction of the commercial building in *National Labor Relations Board* v. *Denver Building & Construction Trades Council*, 341 U. S. 675, 683-684, and the construction of the private dwelling in *Electrical Workers* v. *National Labor Relations Board*, 341 U. S. 694, 696, 699.

"impede the flow of commerce" (R. 43, 48, 50, 51, 53). Second, the court has indicated (R. 55), the granting of injunctive relief is justified where irreparable injury is alleged and where the statutory remedy through the Board is inadequate. We think, for the reasons already stated, that the conceded fact that the Board would have jurisdiction in this case is conclusive against the injunctive remedy by private suit approved below. Here, we turn to the qualifications suggested by the court below, to show that they afford no basis for its contrary view.

1. The distinction suggested by the court below between practices affecting commerce and those impeding its flow is totally without statutory basis. "Congress drew no such distinction but, instead, saw fit to regulate labor relations to the full extent of its constitutional power under the Commerce Clause." *Amalgamated Association* v. *Wisconsin Employment Relations Board*, 340 U. S. 383, 391. There is no yardstick for measuring the quantum of commerce which divides the two areas the decision below seeks to create. But if there were, it would make no difference. To permit both the Board and the state courts to enforce the National Act in the area short of "impeding the flow of commerce" would not eliminate the evil of concurrent administration; it would merely transfer it from all of the field to a part of it. It would, moreover, introduce the troubling questions of how to decide where exclusiveness ends and concurrence begins and whose judgment should prevail as to the loca-

tion of the boundary between the two. In short, the purported distinction creates the very evils which led this Court to hold that there is here no room for "a case by case test of federal supremacy * * *." *Bethlehem Steel Co.* v. *New York Labor Board*, 330 U. S. 767, 776.

2. In suggesting that the injunction in this case was proper because the remedy before the Board is "inadequate" (R. 55), the grounds of inadequacy stated by the court below are (a) the time consumed in the Board's preliminary investigation before it will seek a temporary injunction, during which irreparable injury may occur, and (b) the possibility that the Board may choose not to take jurisdiction, for administrative reasons of budget and staff availability, where the impact on commerce, though enough for the Board to exercise jurisdiction, may not be sufficiently substantial to warrant its exertion. Neither of these grounds sustains the state court's action.

a. The Board conducts a preliminary investigation in every case, so that the remedy before the Board would in the view of the court below virtually never be adequate, for the irreparable injury envisioned by the court is the sort of injury which is likely to ensue as the result of any secondary boycott. And yet it was precisely because the Board does conduct a preliminary investigation to screen out unmeritorious cases that enforcement of Section 8 (b) (4) was entrusted to it rather than to private initiative (*supra*, pp. 26-27). Congress was fully aware that the administrative pro-

cess of screening charges occasions delay. Such delay was one of the reasons advanced in support of the proposal giving private persons independent recourse to federal district courts for injunctions against violations of Section 8 (b) (4). S. Rep. No. 105, 80th Cong., 1st sess., Supplemental Views, 54; 93 Cong. Rec. 4836. But Congress rejected this consideration in favor of disinterested deliberateness. Moreover, it minimized delay with respect to 8 (b) (4) charges by requiring that "the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character" (Section 10 (l)).

In holding that this procedure is inadequate the court below is reweighing the choice that Congress has already made. "When Congress itself has struck the balance, has defined the weight to be given the competing interests, a court of equity is not justified in ignoring that pronouncement under the guise of exercising equitable discretion." Mr. Justice Frankfurter, concurring in *Youngstown Sheet and Tube Co.* v. *Sawyer*, 343 U. S. 579, 609-610.

The vice which Congress sought to avoid is illustrated by this case. Upon the face of the complaint alone, without a hearing or even supporting affidavits, the Alabama Circuit Court issued a temporary injunction (R. 9-11). In contrast, under the procedure prescribed by Section 10 (l) of the National Act, a temporary injunction at the suit of the Board may issue only after administrative investigation of the charge discloses that there is

reasonable cause to believe that the charge has merit and a complaint should issue. Furthermore, a temporary injunction may issue only after notice and hearing, and "no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period." All the procedural safeguards with which Congress hedged the grant of temporary relief were bypassed in this case.

There are, in addition, substantive considerations, important in the Board's administration of the Act, which are ignored by the decision below. Had the complaint before the Alabama Circuit Court been brought as a charge before the Board, administrative screening would have promptly disclosed that it is not possible to tell on the face of the complaint alone whether or not there is a violation of Section 8 (b) (4) (A) and (B). In accordance with the criteria established by the Board to determine whether the picketing of a construction project is primary or secondary,[26] it would have been necessary to inquire (1) whether the picketing clearly identified the Trade Council's dispute as being with Bear Brothers, the

[26] For an explanation of the criteria, see the Board's brief in *National Labor Relations Board* v. *Denver Building and Construction Trade Council*, 341 U. S. 675, No. 393, October Term, 1950, pp. 23-38; see also, *National Labor Relations Board* v. *Service Trade Chauffeurs*, 191 F. 2d 65 (C. A. 2).

primary employer, and not with Ledbetter, the neutral employer; (2) whether the picketing occurred only at the times when Bear Brothers' employees were present on the job; and (3) whether any resulting discontinuance of business between Bear Brothers and Ledbetter occurred only as a consequence of primary pressure legitimately directed against Bear Brothers to secure recognition. The complaint on its face fails to provide an answer to these questions.

Even if investigation proved this to be a case where injunctive relief seemed warranted, the temporary injunction issued by the Alabama Circuit Court would be clearly excessive in scope. It enjoins all picketing of the construction project (R. 10-11). Any injunction conforming to the National Act should enjoin only secondary picketing. The injunction also prohibits "Engaging in any unfair labor practices as defined by the Labor Management Relations Act" (R. 10). A violation of Section 8 (b) (4) (A) and (B) does not warrant an injunction extended against all of the dissimilar unfair labor practices forbidden to a union, including such unrelated conduct as, for example, a refusal to bargain in good faith (Section 8(b) (3)), or requiring employees to pay an excessive or discriminatory initiation fee (Section 8(b) (5)). *National Labor Relations Board* v. *Express Publishing Co.*, 312 U. S. 426.

It seems clear, therefore, that the preliminary investigation by the General Counsel of the Board which the Act prescribes, but which the court below considers to render the statutory remedy inade-

quate, serves vital purposes which have been neglected in this case. The result of bypassing the Board is to administer the Act contrary to the will of Congress.

b. There remains, finally, the argument that the statutory remedy is inadequate because of the "possibility" that the Board might not entertain the unfair labor practice charge because of its unsubstantial impact on commerce measured by the Board's administrative standards.[27] The short answer is that the Board's discretionary withholding of its power does not change the right conferred by the National Act, or the method of its enforcement, from a public to a private one. The jurisdiction which the Board chooses not to exercise is not thereby conferred on another tribunal to be exerted at the suit of a private person.

But there is no occasion in this case to determine whether, if the Board declines to take jurisdiction, there are ways in which, apart from enforcing the National Act, a State is free to act. If there is room for state action, it could in any event only invoke its own law, and not, as the court below did, rely on the National Act, which confers no enforcement authority on it in any circumstances. Furthermore, assuming that another tribunal may act where the

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[27] For a full explanation of the standards applied by the Board to determine whether to assert jurisdiction, see National Labor Relations Board, Sixteenth Annual Report, pp. 15-39 (1951). The Board's policy has been approved in *National Labor Relations Board* v. *Denver Building and Construction Trades Council*, 341 U. S. 675, 684; *Haleston Drug Stores, Inc.* v. *National Labor Relations Board*, 187 F. 2d 418, (C. A. 9), certiorari denied, 342 U. S. 815; *Progressive Mine Workers* v. *National Labor Relations Board*, 187 F. 2d 298 (C. A. 7).

Board does not, the Board must certainly be given an opportunity first to decide, before other tribunals intervene, whether its own standards call for the exercise of its jurisdiction. Since the Board can make this determination only after a charge has been filed with it, the filing of a charge with the Board and its declination of jurisdiction would be indispensable preconditions to resort to any other tribunal.

In the circumstances presented here, the reference of the court below "to a *possibility* that the Board will not take jurisdiction" is purely speculative (R. 55; emphasis supplied). There is no evidence in the record sufficient to determine whether or not, in the exercise of its administrative discretion, the Board would act in this case. Generally speaking, insofar as its criteria bear on a situation like the present, the Board will assert jurisdiction over an enterprise where it has (1) a direct inflow of goods from out-of-state sources valued at $500,000 a year, or (2) an indirect inflow valued at $1,000,000, or (3) a direct outflow to other states valued at $25,000 a year, or (4) an outflow to interstate concerns within the state valued at $50,000 a year, or (5) a combination of inflow and outflow which, when the percentage in each class is added together, comes to 100.[28] In addition, where, as here, a secondary boycott is alleged, the Board considers not only the entire business of the primary employer (Bear Brothers), without limitation to the particular project at which the boycott is occur-

[28] National Labor Relations Board, Sixteenth Annual Report, p. 16 (1951).

ring, but adds to it also the operations of any neutral employer (such as Ledbetter) to the extent that they are affected by the boycott activities.[29] In this case, on the record made, it is complete conjecture whether or not the operations of Bear Brothers and Ledbetter (and any other neutral employer who may be affected) suffice to meet the Board's administrative standards for exercising jurisdiction. Accordingly, it is on surmise alone that the court below invokes the "possibility" of the Board's refusal of jurisdiction as a basis for finding the remedy before the Board to be inadequate.

CONCLUSION

For the reasons stated it is respectfully submitted that the judgment of the court below should be reversed.

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DAVID P. FINDLING,
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MOZART G. RATNER,
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OCTOBER, 1952.

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[29] *Id.* at pp. 22-23, 34-37.

APPENDIX

The revelant provisions of the original National Labor Relations Act (49 Stat. 449, 29 U. S. C. Secs. 151, *et seq.*), and of the National Labor Relations Act, as amended by the Labor Management Relations Act, 1947 (61 Stat. 136, 29 U. S. C., Supp. V, Secs. 141, *et seq.*), are as follows:

Key to Comparison

Portions of the National Labor Relations Act which have been eliminated by the Labor Management Relations Act are enclosed in black brackets; provisions which have been added to the National Labor Relations Act are in italics; and unchanged portions of the National Labor Relations Act are shown in roman.

National Labor Relations Act

[AN ACT]

[To diminsh the causes of labor disputes burdening or obstructing interstate and foreign commerce, to create a National Labor Relations Board, and for other purposes.]

Findings and Policies

Section 1. The denial by *some* employers of the right of employees to organize and the refusal by *some* employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) ma-

terially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

Experience has further demonstrated that certain practices by some labor organizations, their officers and members have the intent or the necessary effect of burdening or obstructing commerce

by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

DEFINITIONS

SEC. 2. When used in this Act—

* * * * * *

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

(8) The term "unfair labor practice" means any unfair labor practice listed in section 8.

* * * * * *

(10) The term "National Labor Relations Board" means the National Labor Relations Board [created by] *provided for in* section 3 of this Act.

* * * * *

NATIONAL LABOR RELATIONS BOARD

SEC. 3. (a) [There is hereby created a board, to be known as the "National Labor Relations Board" (hereinafter referred to as the "Board"), which shall be composed of three members, who shall be appointed by the President, by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of three years, and one for a term of five years, but their successors shall be appointed for terms of five years each, except] *The National Labor Relations Board (hereinafter called the "Board") created by this Act prior to its amendment by the Labor Management Relations Act, 1947, is hereby continued as an agency of the United States, except that the Board shall consist of five instead of three members, appointed by the President, by and with the advice and consent of the Senate. Of the two additional members so provided for, one shall be appointed for a term*

of five years, and the other for a term of two years. Their successors, and the successors of the other members, shall be appointed for terms of five years each, excepting that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as Chairman of the Board. Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

(b) *The Board is authorized to delegate to any group of three or more members any or all of the powers which it may itself exercise.* A vacancy in the Board shall not impair the right of the remaining members to exercise all of the powers of the Board, and [two] *three* members of the Board shall, at all times, constitute a quorum [.] *of the Board, except that two members shall constitute a quorum of any group designated pursuant to the first sentence hereof.* The Board shall have an official seal which shall be judicially noticed.

* * * * *

(d) There shall be a General Counsel of the Board who shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel of the Board shall exercise general supervision over all attorneys employed by the Board (other than trial examiners and legal assistants to Board members) and over the officers and employees in the regional offices. He shall have final authority, on behalf of the Board, in respect of the investigation

of charges and issuance of complaints under section 10, and in respect of the prosecution of such complaints before the Board, and shall have such other duties as the Board may prescribe or as may be provided by law.

* * * * *

UNFAIR LABOR PRACTICES

SEC. 8. (*a*). It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6, [(a)] an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;

(3) by discrimination in regard to hire or tenure of employment of any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in [the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701-712, as amended from time to time, or in any code or agreement approved or prescribed thereunder,] any other statute of the United States, shall preclude an employer from making an

agreement with a labor organization (not established, maintained, or assisted by any action defined in *section 8 (a) of* this Act as an unfair labor practice) to require as a condition of employment membership therein *on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later,* (*i*) if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective-bargaining unit covered by such agreement when made; *and* (*ii*) *if, following the most recent election held as provided in section 9 (e) the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to authorize such labor organization to make such an agreement: Provided further, That no employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;*

(4) to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act;

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: Provided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 9 (a);

(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any em-

ployer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; (B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9; (C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9; (D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work; Provided, That nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act;

(5) to require of employees covered by an agreement authorized under subsection (a) (3) the payment, as a condition precedent to becoming a mem-

ber of such organization, of a fee in an amount which the Board finds excessive or discriminatory under all the circumstances. In making such a finding, the Board shall consider, among other relevant factors, the practices and customs of labor organizations in the particular industry, and the wages currently paid to the employees affected; and

(6) to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed.

* * * * * *

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power [shall be exclusive, and] shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, [code,] law, or otherwise: *Provided, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith.*

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint: *Provided, That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made, unless the person aggrieved thereby was prevented from filing such charge by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his discharge.* Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent, or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. [In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.] *Any such proceeding shall, so far as practicable, be conducted in accordance with the*

rules of evidence applicable in the district courts of the United States under the rules of civil procedure for the district courts of the United States, adopted by the Supreme Court of the United States pursuant to the Act of June 19, 1934 (U. S. C., title 28, secs. 723-B, 723-C).

(c) The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon [all] *the preponderance of* the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affimative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: *Provided, That where an order directs reinstatement of an employee, back pay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by him: And provided further, That in determining whether a complaint shall issue alleging a violation of section 8 (a) (1) or section 8 (a) (2), and in deciding such cases, the same regulations and rules of decision shall apply irrespective of whether or not the labor organization affected is affiliated with a labor organization national or international in scope.* Such order may further require such person to make reports from time to time showing the ex-

tent to which it has complied with the order. If upon [all] *the preponderance of* the testimony taken the Board shall *not* be of the opinion that *the* [no] person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint. *No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause. In case the evidence is presented before a member of the Board, or before an examiner or examiners thereof, such member, or such examiner or examiners, as the case may be, shall issue and cause to be served on the parties to the proceeding a proposed report, together with a recommended order, which shall be filed with the Board, and if no exceptions are filed within twenty days after service thereof upon such parties, or within such further period as the Board may authorize, such recommended order shall become the order of the Board and become effective as therein prescribed.*

(d) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the *United States* Court of Appeals [of] *for* the District of Columbia), or if all the circuit

courts of appeals to which application may be made are in vacation, any district court of the United States (including the [Supreme] *District* Court of the *United States for the* District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board [as to the facts,] *with respect to questions of fact* if supported by *substantial* evidence[,] *on the record considered as a whole* shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the

court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its members, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which[,] *findings with respect to questions of fact* if supported by *substantial* evidence *on the record considered as a whole* shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the *United States* Court of Appeals [of] *for* the District of Columbia, by filing in such court

a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered, and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; [and] the findings of the Board [as to the facts,] *with respect to questions of fact* if supported by *substantial* evidence[,] *on the record considered as a whole* shall in like manner be conclusive.

(g) The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdic-

tion of courts sitting in equity, and for other purposes", approved March 23, 1932 (U. S. C., Supp. VII, title 29, secs. 101-115).

(i) Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed.

(j) The Board shall have power, upon issuance of a complaint as provided in subsection (b) charging that any person has engaged in or is engaging in an unfair labor practice, to petition any district court of the United States (including the District Court of the United States for the District of Columbia), within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper.

(k) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (D) of section 8 (b), the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adpustment of the dispute, such charge shall be dismissed.

(l) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (A), (B), or (C) of section 8 (b), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: Provided further, That no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period. Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel

and present any relevant testimony: Provided further, That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit. In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 8 (b) (4) (D).

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